

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID A. HESS,

Petitioner,

v.

CASE NO. 2:04-cv-1144
JUDGE MARBLEY
MAGISTRATE JUDGE ABEL

MICHELLE EBERLIN, Warden,

Respondent.

OPINION AND ORDER

On March 20, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that claims one through four, and claim six be dismissed, and that respondent be directed to provide a copy of the state trial transcript in relation to claim five. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Petitioner objects solely to the Magistrate Judge's recommendations on claims two, three, and six. Petitioner again raises all of the same arguments that were previously presented.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed at length in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Claims one through four, and claim six are **DISMISSED**.

Respondent is **DIRECTED** to provide a copy of the state trial transcript within twenty (20) days of the date of this order so that the Court may determine whether petitioner can establish cause

and prejudice for his procedural default of claim five.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge